

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MERCK & CO., Inc.)	
)	
Plaintiff,)	
)	
v.)	
)	
RANBAXY INC. and RANBAXY)	
LABORATORIES LIMITED,)	
)	
Defendants.)	
)	C.A. No. 07-229 (GMS)
RANBAXY INC. and RANBAXY)	
LABORATORIES LIMITED,)	
)	
Counterclaim Plaintiffs,)	
)	
v.)	
)	
MERCK & CO., Inc.)	
)	
Counterclaim Defendant.)	
)	

**CONCESSION AND REQUEST FOR ENTRY OF ORDER OF INFRINGEMENT BY
DEFENDANTS/COUNTERCLAIM PLAINTIFFS RANBAXY INC. AND RANBAXY
LABORATORIES LIMITED IN VIEW OF THE COURT'S 2/29/2008 CLAIM
CONSTRUCTION ORDER**

WHEREAS, under this Court's 2/29/2008 claim construction Order, Ranbaxy Inc. and Ranbaxy Laboratories (hereinafter collectively "Ranbaxy") hereby concede that their ANDA products at issue in this litigation (specifically, the injectable products comprising imipenem and cilastatin described in ANDA Nos. 65-469, 65-512 and 65-519) are literally covered by claims 1, 2, 9, 19, 20, 22, 23 and 24 of U.S. Patent No. 5,147,868;

WHEREAS, Ranbaxy does not concede that these claims are valid or enforceable, and is pursuing its defenses regarding these issues;

WHEREAS, Ranbaxy has proposed a joint stipulation regarding infringement to Merck, but the parties have been unable to agree on the terms of the stipulation;

WHEREAS, Ranbaxy reserves the right to reassert its defense of non-infringement if the Court's claim construction is at any time modified in any way;

WHEREAS, Ranbaxy reserves its right to appeal the Court's 2/29/08 claim construction Order after final disposition of this action;

In light of the foregoing, Ranbaxy respectfully requests that the Court enter the attached Order.

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Attorneys for Defendant/Counterclaimant
Ranbaxy Laboratories Limited and Ranbaxy Inc.

Dated: March 11, 2008

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 12, 2008, I electronically filed the foregoing document with the Clerk of Court using CM/ECF and caused the same to be served on the defendant at the addresses and in the manner indicated below:

HAND DELIVERY and E-MAIL:

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I hereby certify that on March 12, 2008, the foregoing document was sent to the following non-registered participants in the manner indicated:

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)	
MERCK & CO., Inc.)	
)	
Counterclaim Defendant.)	
)	

[PROPOSED] ORDER

WHEREAS the Court, having considered the Concession filed by Defendants Ranbaxy Inc. and Ranbaxy Laboratories,

IT IS HEREBY ORDERED this ____ day of March, 2008 that:

(a) Under this Court's 2/29/2008 claim construction Order, Ranbaxy Inc.'s and Ranbaxy Laboratories' (hereinafter collectively "Ranbaxy") ANDA products at issue in this litigation (specifically, the injectable products comprising imipenem and cilastatin described in

ANDA Nos. 65-469, 65-512 and 65-519) are literally covered by claims 1, 2, 9, 19, 20, 22, 23 and 24 of U.S. Patent No. 5,147,868;

- (b) Ranbaxy does not concede that these claims are valid or enforceable, and is pursuing its defenses regarding these issues;
- (c) Ranbaxy has reserved the right to reassert its defense of non-infringement if the Court's claim construction is at any time modified in any way; and
- (d) Ranbaxy has reserved its right to appeal the Court's 2/29/08 claim construction Order after final disposition of this action.

HONORABLE GREGORY M. SLEET
UNITED STATES DISTRICT COURT, CHIEF JUDGE